

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JEFFREY L. SIMMONS,

Plaintiff,

v.

Civil Action No.2:08-CV-65

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

REPORT AND RECOMMENDATION PLAINTIFF'S
APPLICATION TO PROCEED
IN FORMA PAUPERIS BE DENIED

On May 14, 2008, Jeffrey Simmons, ["Plaintiff"], filed a complaint under 42 U.S.C. § 405(g) and an Application for Leave to Proceed in forma pauperis. Plaintiff's application reveals he receives, on average, \$773 each month from self employment and \$437.50 each month from child support, for a total of \$1,210 each month. Plaintiff has \$200 in cash, which he states he needs for food and bills. Plaintiff owns a 1994 mobile home valued at \$10,000, a Honda 4x4 ATV valued at \$1,000, and one acre of land and a building valued at \$6,000. Plaintiff supports his son, aged 22, and his daughter, aged 16. Plaintiff's monthly expenses total \$1184.59. Based on this information, the Court finds Plaintiff can afford the filing fee.

Accordingly, it is recommended Plaintiff's May 14, 2008 Application to Proceed in forma pauperis be **DENIED**, and Plaintiff be ordered to pay the full filing fee. Plaintiff should also be warned that the failure to pay the full filing fee within the time allowed by the Court will result in the dismissal of his complaint.

Plaintiff may file, within ten (10) days from the date of this Report and Recommendation, with the Clerk of Court, written objections identifying those portions of the recommendation to which objection is made, and the basis for such objections. A copy of such objections should also be submitted to the District Court Judge of Record. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to mail a copy of this Report and Recommendation to the plaintiff and counsel of record, as applicable.

DATED: June 6, 2008

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE